

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Peters, Timothy & Renee

BKY: 18-41882

Debtors

Chapter 13 Case

**DEBTORS' RESPONSE TO OBJECTION TO CONFIRMATION AND MOTION FOR
RELIEF FROM AUTOMATIC STAY**

To: Russell Hunter, Gregory A. Burrell and other parties in interest.

1. Russell Hunter has objected to confirmation of the debtors' chapter 13 plan on the grounds that the debtors' plan is proposed in bad faith, is unfeasible, and doesn't treat his secured claim.
2. The matter is set for hearing on December 20, 2018 at 10:30 AM before the honorable Kathleen H. Sanberg in U.S. Bankruptcy Court, Courtroom 8 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.
3. The petition commencing this chapter 13 case was filed on June 11, 2018. The debtors have timely made all 6 \$475 payments due under the plan.
4. Russell Hunter objects to confirmation on the grounds that this chapter 13 plan was proposed in bad faith. The *In re Estus*, 695 F.2d 311, 315 (8th Cir. 1982) case set forth a 7-factor test for good faith in chapter 13 plan proposals. The test is applied to this case as follows: 1) the amount of the proposed payments is substantial at \$28,500. 2) They are contributing as much as they can afford with their current earning potential. 3) The plan goes for the entire 5-years allowed. 4) they are not modifying any secured claims. 5) They are not preferring any classes of creditors. 6) nor are they seeking to discharge debts that would not be discharged in chapter 7. The debtors, after learning that their initial schedules were inaccurate, amended them to address factor 7, the accuracy of the schedules. Of these 7 factors set forth in the , the debtors have satisfied 6 of 7.

5. Russell Hunter further asserts that the plan may not be confirmed because it does not treat his secured claim. The debtors contend that a judgment creditor is not a secured creditor in chapter 13 where the debtors' only real property is a homestead protected from judicial liens by Minn. Stat. § 510.01 *et seq.* The debtors' plan further provides that "Claims filed as secured but for which the plan makes no express provision shall be paid as unsecured as set forth in Parts 14 and 15 of the Plan." Thus the debtors' plan provides for treatment of this claim as a general unsecured claim, which is the correct legal classification.

6. Russell Hunter contends that the plan is unfeasible because he intends to object to the dischargeability of his debt. The deadline for such an action passed on October 15, 2018. The debtors have also made all 6 payments thus far called for under the plan, demonstrating feasibility.

7. Russell Hunter's plea for relief does not request relief from the automatic stay, nor cite factual and legal grounds entitling him to that relief.

WHEREFORE, the debtor respectfully requests that the court confirm the debtor's chapter 13 plan over the objection made by Russell Hunter and deny him relief from the automatic stay, and such other relief as is just and equitable.

Dated: December 17, 2018
PLLC

By: Walker & Walker Law Offices,

/e/ Andrew C. walker
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UNSWORN CERTIFICATE OF SERVICE

I, Andrew C. Walker, declare under penalty of perjury that on December 17, 2018, I mailed copies of the foregoing Debtors Response to Objection to Confirmation first class mail, postage prepaid, to each entity named below at the address stated for each entity, or through electronic mail by CM/ECF:

United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Gregory Burrell
Standing Chapter 13 Trustee
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Russell Hunter
c/o Mark Thompson
4927 34th Ave S
Minneapolis, MN 55417

Executed on: December 17, 2018

/e/ Andrew C. Walker

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